

Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 2005

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IMPORTANT CHANGE

Information is provided on the new veterans and surviving spouses property tax credit. See page 14.

INTRODUCTION

On January 1, 1986, Wisconsin became a marital property state. As part of marital property reform, Wisconsin allows persons married at the end of the taxable year to file joint income tax returns. If you and your spouse file a joint return, Wisconsin's marital property law won't affect the amount of income that you must report for Wisconsin income tax purposes. If you are married and do not file a joint return or if you became divorced in 2005, however, Wisconsin's marital property law generally will affect the amount of income that you must report for Wisconsin income tax purposes.

The automatic sharing of marital property income may require you to file a separate return, or to join with your spouse in the filing of a joint return.

This publication explains how Wisconsin's marital property law affects married persons who file separate returns and persons who became divorced in 2005 for Wisconsin income tax purposes. You should understand how the marital property law affects the way you figure your Wisconsin tax before filling in your Wisconsin income tax return. For information about how to fill in your federal income tax return, obtain federal Publication 504, *Divorced or Separated Individuals*, and federal Publication 555, *Community Property*, from the Internal Revenue Service. In addition, the Midwest District Office of the Internal Revenue Service and the Department of Revenue have a joint publication titled *Federal and Wisconsin Income Tax Reporting Under the Marital Property Act*, which you may obtain from the Department of Revenue (ask for Wisconsin Publication 113).

This publication is divided into three parts. The first part gives an overview of Wisconsin's marital property law. The second part explains how to figure your Wisconsin income tax under the marital property law. The third part explains how to figure your homestead credit if you maintained a separate home or if you became divorced in 2005.

If, after reading this publication, you have any questions about how to figure your Wisconsin income tax or homestead credit, please contact any Department of Revenue office or write to the Technical Services Staff, Wisconsin Department of Revenue, MS 6-40, P.O. Box 8933, Madison, WI 53708-8933.

CAUTION

The information in this publication reflects the interpretations by the Wisconsin Department of Revenue of laws enacted by the Wisconsin Legislature as of November 1, 2005. Laws enacted after that date, administrative rules, and court decisions may change the interpretations in this publication.

I. OVERVIEW OF WISCONSIN'S MARITAL PROPERTY LAW

A. What is Wisconsin's marital property law?

The marital property law changed Wisconsin's property law system from a "common law property system" to a type of "community property system." Wisconsin is one of nine community property states — Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington are the other community property states. Alaska state law offers a community property election.

1. What is a "common law property system"?

Under a common law property system, property acquired during marriage generally belongs to the spouse who acquired the property. You own what you yourself earn, buy, inherit, or receive as a gift from another person. You own the income from your property. You own, and you have complete control over, the property titled in your name. You can sell or give away your property without violating your spouse's rights. However, your spouse has rights to support by you during life and to a portion of your property at your death.

Under a common law property system, the title to property generally determines ownership of property between you and your spouse. For example, title may be in the form of a deed to land, a stock certificate, or a certificate of title to a car. The title to property also determines what income is reportable by you and your spouse on separate income tax returns while domiciled in a common law property state.

2. What is a "community property system"?

Under a community property system, property acquired during a marriage generally belongs to both spouses equally. Marriage is a legal and economic partnership. You and your spouse are equal partners, whether you contribute money or services or both to the marriage, and you and your spouse will share equally all property acquired during your marriage,

except property that you alone inherit or receive as a gift from another person. You and your spouse may own equally what either of you earns or buys. You and your spouse may own equally the income from property owned by either of you. However, you have the right to manage and control property titled in your name or in neither spouse's name. Management rights don't determine ownership.

Under a community property system, the classification of property generally determines ownership of property between you and your spouse. The classification of property generally is based on two factors: when the property was acquired and how the property was acquired. You and your spouse may reclassify property by agreement. The classification of property also determines what income is reportable by you and your spouse on separate income tax returns while domiciled in a community property state.

Wisconsin's marital property law has borrowed many features from the existing community property states. But the law also has features that no community property state has.

B. When does Wisconsin's marital property law apply?

Wisconsin's marital property law took effect on January 1, 1986, and applies to you and your spouse after the "determination date."

1. What is the "determination date"?

Your determination date is the last to occur of the following:

- If you were married and domiciled in Wisconsin on January 1, 1986, the marital property law applied to you on January 1, 1986.
- If you marry after January 1, 1986, and you are domiciled in Wisconsin at the time of your marriage, the marital property law applies to you on the date of your marriage.
- If you are married and you establish a Wisconsin domicile after January 1, 1986, the marital property law applies to you on the date you and your spouse establish a Wisconsin domicile.

Note. The marital property law generally applies only while both spouses are domiciled in Wisconsin.

2. What is a "domicile"?

Your domicile is your true, fixed, and permanent home where you intend to remain permanently and indefinitely and to which, whenever absent, you intend to return. It is often referred to as "legal residence." You can be physically present or residing in one locality but maintain a domicile in another. You can have only one domicile at any time.

Your domicile doesn't change if you leave your state of domicile —

- For a brief rest or vacation, or
- To complete a particular transaction, perform a particular contract, or fulfill a particular engagement, but you intend to return to your state of domicile whether or not you complete the transaction, contract, or engagement.

You aren't domiciled in Wisconsin if —

- You are passing through Wisconsin on your way to another state or country, or
- You are in Wisconsin for a brief rest or vacation, or
- You are in Wisconsin to complete a particular transaction, perform a particular contract, or fulfill a particular engagement which requires your presence in Wisconsin for a short period of time, and you haven't abandoned your domicile in another state.

Your domicile, once established, isn't lost until all three of the following occur or exist:

- You specifically intend to abandon your old domicile and take actions consistent with such intent, and
- You intend to acquire a new domicile and take actions consistent with such intent, and
- You are physically present in the new domicile.

No change of domicile results from leaving Wisconsin to go to another state if you intend to remain there only for a limited time and then to return to Wisconsin.

C. How does Wisconsin's marital property law classify property?

Under the marital property law, all property that you and your spouse acquire after the determination date is generally classified as "marital property" or as "individual property." (Please note that the rules described below for classifying property may not apply for purposes of determining the basis of property upon the death of a spouse. For information about basis adjustment, see Wisconsin Publication 113, *Federal and Wisconsin Income Tax Reporting Under the Marital Property Act*.)

1. What is "marital property"?

Marital property is all property classified as marital property and all property acquired by you or your spouse during marriage after the determination date, unless it is otherwise classified by the marital property law. The law presumes that all property owned by spouses is marital property. Any person who contends that certain property isn't marital property must prove that the property's classification is something else.

You and your spouse each have a present, undivided one-half ownership interest in each item of marital property. All marital property belongs as much to you as it does to your spouse, regardless of how it is titled.

Marital property generally includes:

- Income earned or accrued by a spouse or derived from marital property and nonmarital property owned by a spouse during the marriage and after the determination date. "Income" includes wages, salaries, commissions, bonuses, other employment benefits, dividends, interest, net rents, and other earnings from marital property and nonmarital property.
- The substantial increase in value of nonmarital property which resulted from the substantial efforts of either spouse that weren't reasonably compensated.
- Nonmarital property that is mixed with marital property and can no longer be identified by tracing.

Note. In this publication, the term "nonmarital property" refers to all property which isn't marital property. Nonmarital property includes individual property and unclassified property.

2. What is "individual property"?

Individual property is property owned by one spouse alone under the marital property system.

After the determination date and during the marriage, individual property includes:

- Property acquired by one spouse by gift or inheritance during the marriage.
- Property acquired in exchange for, or with the proceeds of, individual property.
- The increase in value of nonmarital property, except to the extent that this increase in value is classified as marital property.
- Income (and principal) to one spouse from a trust created by a third person, unless the trust provides otherwise.
- Income from a gift of property from one spouse to the other spouse, unless the spouse making the gift provides otherwise.
- Income or property designated individual property by a marital property agreement or a court decree.
- Income derived from the nonmarital property of a spouse which that spouse has designated in a unilateral statement as his or her individual income.
- For marriages occurring after December 31, 1985, property owned at a marriage by a Wisconsin-domiciled person.

3. What is "unclassified property"?

Property owned by spouses before their determination date isn't classified by the marital property law. Such unclassified property is treated as if it were individual property during the marriage. At death, property of the decedent spouse acquired during the marriage and before the determination date, which would have been marital property if acquired after the determination date, is treated as if it were marital property for certain elective rights of the surviving spouse.

4. What happens if marital property is mixed with other property?

If marital property is mixed with any other type of property, the other type of property becomes marital property, unless that other type of property can be traced. This mixing rule doesn't apply for income tax basis purposes for property held in joint tenancy or tenancy in common.

For example, if you had bought a home before your marriage and you make mortgage loan principal payments from your wages during the marriage, the home is “mixed property.” If you had invested \$20,000 in the home before you married and you have records to prove this, at least \$20,000 of the home’s value will retain its character as nonmarital property. The presumption is that the rest is marital property and half of it belongs to your spouse. If you don’t have adequate records to prove the amount of nonmarital property, the full value of the home is marital property.

5. How are retirement benefits classified?

Special rules apply to retirement benefits and other deferred employment benefits. Deferred employment benefits also include payments from profit-sharing and stock bonus plans, annuities, and deferred compensation plans. (NOTE: Unemployment compensation and individual retirement arrangements (IRAs) aren’t considered to be deferred employment benefits. For information on the classification of these items, see *Classification of Income* in the Appendix.)

- Benefits resulting from the employment of a spouse that starts after the determination date are entirely marital property.
- Benefits resulting from the employment of a spouse entirely before the determination date are nonmarital property.
- Benefits resulting from the employment of a spouse partly before and partly after the determination date are mixed property. Figure the marital property portion using this formula:

Period of employment while the marital <u>property law applies</u> *	Total retirement benefits	Marital property portion of the retirement benefits
x		
Total period of employment*		

*Count only employment giving rise to the benefit.

Example. You worked for ABC Company from January 1, 1981, through August 31, 2005. Since you have been married and domiciled in Wisconsin for the past 30 years, your determination date is January 1, 1986. A portion of your retirement benefits from ABC Company is marital property because you worked for this company both before and after January 1, 1986. You figure the marital property portion as follows:

236 months		
<u>employment after 1/1/86</u>	=	80% marital
296 months total employment		property

If you receive \$3,000 of retirement benefits from ABC Company in 2005, \$2,400 (80% x \$3,000) is marital property owned equally by you and your spouse. The remaining \$600 is your nonmarital property. Thus you own \$1,800 of the \$3,000 of retirement benefits (\$600 nonmarital property, plus half of \$2,400).

D. Can married persons change the classification of property?

You and your spouse can change the classification of property by gift or marital property agreement. Certain real property and securities may be reclassified by conveyance, signed by both you and your spouse. You can change the classification of income from certain property by unilateral statement.

1. What is a “marital property agreement”?

A marital property agreement is an agreement solely between you and your spouse. The agreement must be in writing, and it must be signed by both you and your spouse. A marital property agreement remains in effect until replaced by another marital property agreement.

By using a marital property agreement, you and your spouse can have your own system of ownership of your property and income. You can also use a marital property agreement to dispose of your property at your death without probate. However, the law places certain restrictions on marital property agreements. You can’t use a marital property agreement to affect the right of a child to support. Nor can you use an agreement to modify or eliminate spousal support to make one spouse eligible for public assistance. Also, you can’t use an agreement to defraud creditors or bona fide purchasers of marital property.

In addition, the law limits the effect of marital property agreements for Wisconsin income tax and homestead credit purposes. These limitations are explained in Parts II and III of this publication. For example, you can’t use a marital property agreement to retroactively reclassify income for income tax purposes. Since the Department of Revenue isn’t bound by any marital property agreement not provided to the department before the issuance of an assessment or billing, you may want to send a copy of the agreement to the department at the time it is executed. Include both spouses’ social security

numbers and mail the agreement to the attention of the Wisconsin Department of Revenue, Records Management and Office Services Section, Mail Stop 2-232B, P.O. Box 8903, Madison, WI 53708-8903.

The marital property law provides special forms for “statutory property classification agreements.” You and your spouse may use these agreements to classify your marital property as the individual property of the owning spouse or to classify all of your property as marital property. If there is no disclosure of assets and liabilities, the agreement terminates three years after the date both you and your spouse sign the agreement. However, if you and your spouse complete the disclosure form which is provided as an attachment to the agreement form, the agreement is effective until dissolution of the marriage or death. You or your spouse may, however, terminate a statutory property classification agreement unilaterally.

Note. The marital property law had provided for a “statutory individual property classification agreement,” often incorrectly called an “opt-out” agreement, for spouses who wished to classify property owned on December 31, 1985, and other property acquired in 1986 as the individual property of the owner. By law, these agreements terminated January 1, 1987. This reclassification of the spouses’ property as individually-owned property isn’t changed by the January 1, 1987, termination.

Thus, if you had a statutory individual property classification agreement, wages earned during 1986 remain the individual property of the spouse who performed the services as long as the wages can be traced. However, if you and your spouse don’t have another marital property agreement which classifies property acquired in 1987 and after as individual property, wages earned in 1987 and after are marital property. Also, if your home was classified as individual property in 1986, you don’t have a marital property agreement for 1987 and after, and you use marital property to make principal payments on the mortgage loan in 1987 and after, mixing will occur and your home will have a marital property component.

2. What is a “unilateral statement”?

A unilateral statement is a document affecting the *income* from nonmarital property. If you wish to classify the income from nonmarital property as your individual property, you can use a unilateral statement. You can’t use a unilateral statement to classify your wages as your individual property. The

unilateral statement must be in writing, signed by you, and notarized. Within five days after signing the statement, you must deliver a copy to your spouse. A unilateral statement applies only to income accrued *after* the statement is signed. You can’t use it to retroactively reclassify income. You may revoke the unilateral statement at any time; you must deliver a copy of the revocation to your spouse.

The limitations on marital property agreements for Wisconsin income tax and homestead credit purposes also apply to unilateral statements.

E. How are debts treated under Wisconsin’s marital property law?

Under Wisconsin’s marital property law, the type of debt determines what property a creditor can take to satisfy the debt. Debts are classified based on two factors: when the debt was incurred and the reason the debt was incurred. The law classifies debts as follows:

- Support debts are amounts you owe for the support of your spouse or a child of the marriage. Support debts are collectable from all marital property and all of your other property, if you are the incurring spouse.
- Family purpose debts are amounts that you have incurred in the interest of the marriage or the family. The law presumes that debts incurred by a spouse during the marriage are in the interest of the marriage or the family. Family purpose debts are collectable from all marital property and all of your other property, if you are the incurring spouse.
- Premarriage debts are amounts that you incurred before your marriage. Premarriage debts are collectable from your nonmarital property and from that part of the marital property which would have been your property if you hadn’t married (such as wages).
- Predetermination date debts are amounts that you incurred before January 1, 1986. Predetermination date debts are collectable from your nonmarital property and from that part of the marital property which would have been your property if you hadn’t married (such as wages).
- Tort debts (such as from a car accident) that you incur during marriage are collectable from your nonmarital property and your interest in marital property.
- All other debts that you incur during marriage are collectable only from your nonmarital property and your interest in marital property, in that order.

Tax debts incurred during marriage by a spouse after the determination date are incurred in the interest of the mar-

riage or the family. Special presumptions apply to the collection of tax debts and other debts owed to the state. See the “innocent spouse” rules explained in the “Exception” to who is responsible for the tax on a joint return or on a separate return in Parts II.A.1. and 2. of this publication. Also see Part II.E.2.

II. FIGURING YOUR WISCONSIN INCOME TAX UNDER WISCONSIN’S MARITAL PROPERTY LAW

A. Filing Status

Your filing status determines which column of the Tax Table or which Tax Rate Schedule you use to figure your Wisconsin income tax.

Single. You are considered single for the whole year if you were never married or you were legally separated under a **final decree** of divorce or separate maintenance on December 31, 2005.

If you qualify to use the head of household filing status for federal tax purposes, you may also use the head of household filing status for Wisconsin.

Married. You are considered married for the whole year if you were married as of December 31, 2005. If your spouse died during 2005, consider yourself married for the whole year.

You are considered married if —

- You are separated, but you haven’t obtained a final decree of divorce or separate maintenance by December 31, 2005.
- You are separated under an interlocutory decree. This isn’t a final decree.

If you are married, you and your spouse may be able to file a joint return or you may file separate returns. A married person who qualifies to use the head of household filing status for federal tax purposes may also use the head of household filing status for Wisconsin.

The marital property law has little effect on the filing of joint returns. Your tax will generally be lower if you file a joint return. However, you should figure your tax on both a joint return and separate returns to make sure you and your spouse are using the method that will result in the lowest tax.

If you and your spouse meet the requirements, you may file a joint Wisconsin return even though you file separate federal returns.

1. Joint Return

You must include all income, deductions, and credits for you and your spouse on your joint return. Both of you must sign the return, or it won’t be considered a joint return.

Both of you are responsible for any tax, interest, penalties, and fees due on a joint return, so if one of you doesn’t pay, the other may have to. One spouse may be held responsible for the entire amount due even though the other spouse’s services or property generated all of the income.

Exception. You may not have to pay the *additional* tax, interest, penalties, and fees assessed on a joint return if you prove that you didn’t know, and had no reason to know, that there was an understatement of tax that resulted from your spouse’s omitting a gross income item, or claiming a deduction, credit, or property basis in an amount for which there is no basis in fact or law. Taking into account the facts and circumstances, it must also be inequitable to hold you liable for the tax due. If you are relieved of liability for additional tax assessments under this “innocent spouse” rule, the tax liability of your spouse is collectable only from your spouse’s non-marital property and from your spouse’s interest in marital property (such as wages), in that order.

Divorced taxpayers. You are still jointly and individually responsible for any tax, interest, penalties, and fees due on a joint return filed before your divorce. However, this responsibility does not apply if:

- A judgment of divorce entered on or after June 21, 1996, apportions that liability to your former spouse, and
- You provide the department with a copy of that portion of the judgment of divorce that relates to the apportionment of tax liability.

Separate returns after joint return. If you file a joint return, you can’t, after the due date of your return, change your mind and file a separate return. If you are allowed to file a separate return, you and your spouse must divide the tax paid on the joint return between you in proportion to the tax you figure on your separate returns. If the amount paid on the joint return isn’t equal to or more than the tax shown

on your separate returns, you must pay the additional tax due on your separate return when you file it.

2. Separate Returns

If you choose to file separate returns, you and your spouse must each report half of your combined marital property income, deductions, and credits (but see the “Exceptions” described below and in Part II.B.4.). This is true even if you haven’t received any of the income from your spouse. In addition, you must each report your own individual income, deductions, and credits. Attach a worksheet to your return showing how you figured the income, deductions, and credits each of you reported. See the Appendix for a worksheet to fill in and attach to your Wisconsin income tax return.

If you file a separate return, you and your spouse will generally pay more combined Wisconsin income tax. This is because the standard deduction may be lower for married persons filing separately. The following also apply:

- You can’t take the credit for a married couple when both are employed.
- You generally can’t take the earned income credit.
- If you lived with your spouse at any time in 2005—
 - a. You may have to include in income the total amount of any unemployment compensation you received in 2005.
 - b. You may have to include in income up to one-half of any social security benefits you received in 2005.
- You won’t qualify for the disability income exclusion.

If you and your spouse file separately, you are responsible for the tax due on your own return. Your marital property (such as wages) may also be the source for payment of your spouse’s tax since all tax debts, including interest, penalties, and fees, incurred during marriage by a spouse after the determination date are incurred in the interest of the marriage or the family. Therefore, *all* marital property and all other property of the spouse filing the separate return may be used to pay the amount due on a separate return.

Exception. You may not have to pay the *additional* tax, interest, penalties, and fees assessed on a separate return if it is determined that you weren’t

notified of the unreported marital property income that resulted from your spouse’s services or property. In such cases, the Department of Revenue will include the entire amount of that unreported marital property income in the income of the spouse who had the right to control it. Title to property determines which spouse has management and control rights. If you are relieved of liability for additional tax assessments under this “innocent spouse” rule, the tax liability of your spouse is collectable only from your spouse’s nonmarital property and from your spouse’s interest in marital property (such as wages), in that order.

Joint return after separate returns. If you or your spouse or both file separate returns, you may change to a joint return any time within four years from the due date of the separate returns. This 4-year period doesn’t include any extensions. If the amount paid on your separate returns isn’t equal to or more than the total tax shown on the joint return, you must pay the additional tax due on the joint return when you file it.

B. Income Under the Marital Property Law

To figure the best way to file your return — jointly or separately — you must identify your marital property income and individual income according to Wisconsin law. Generally, marital property income not taxable by Wisconsin keeps its nontaxable status for both spouses.

If both spouses are domiciled in Wisconsin, you generally must follow the marital property law in figuring your total income subject to tax, even though you are separated from your spouse. If you are divorced during the taxable year, you may have marital property income up to the date of your divorce.

Any income that is classified as marital property income is taxed half to each spouse, unless one of the exceptions applies (see *Exceptions to Reporting Income Under the Marital Property Law for Wisconsin Tax Purposes* in Part II.B.4.). Any income that is classified as individual income is taxed to the spouse who owns it.

1. Marital Property Income

Marital property income includes the following:

- Wages, salaries, commissions, bonuses, gratuities, payments in kind, deferred employment benefits, and other economic benefits attributable to the effort of a spouse. (Note: Deferred employment benefits include payments from pension, profit-sharing, and stock bonus plans, annuities, self-

employment retirement plans, and deferred compensation plans. See Part I.C.5. for a special rule for figuring the marital property portion of these benefits.)

- Dividends from stock that is marital, individual, or unclassified property.
- Interest from savings accounts and other investments that are marital, individual, or unclassified property.
- Net rents from marital, individual, or unclassified property.
- Gain on the sale of marital property.
- Gain on the sale of individual or unclassified property to the extent that the substantial increase in value is due to the substantial efforts of either spouse that weren't reasonably compensated.

2. Individual Income

Income from the following sources is generally individual property:

- Income to one spouse from a trust created by a third party, unless the trust provides otherwise.
- Income from a gift of property from one spouse to the other spouse, unless the spouse making the gift provides otherwise.
- Gain on the sale of individual or unclassified property (unless the gain is the result of a substantial increase in value due to the substantial efforts of either spouse that weren't reasonably compensated).
- Income classified as individual property by a marital property agreement.
- Income classified as individual property by a unilateral statement.
- Income classified as individual property by a court decree.

For more examples of marital property and individual income, see *Classification of Income* in the Appendix.

3. Income Earned by Separated or Divorced Spouses

Separated spouses. Even if you are separated from your spouse, you and your spouse must treat both of your incomes as marital property income. Income you earn after your separation but before a final de-

cree of divorce is granted continues to be marital property income. However, you and your spouse may enter into a marital property agreement providing that income earned by either of you is your individual income. Income earned by either of you *after* the effective date of such an agreement is treated as the individual income of the spouse earning the income, not as marital property income. You can't use a marital property agreement to reclassify income earned prior to the agreement for income tax purposes.

Divorced spouses. An absolute decree of divorce ends the marital community. When the marital community is ended, the marital property assets are divided between the spouses. Any income earned after the marriage ends is taxable only to the spouse to whom it belongs. However, each spouse is generally taxed on half of the marital property income for the part of the year before the marital community ends. You can't use a marital property agreement to reclassify income earned prior to the agreement for income tax purposes. Nor can a court order retroactively reclassify income for income tax purposes.

4. Exceptions to Reporting Income Under the Marital Property Law for Wisconsin Tax Purposes

Wisconsin law provides three exceptions to the general rule that income is marital property and one-half is reportable by each spouse.

a. Marital Property Agreements and Unilateral Statements

For Wisconsin income tax purposes, a marital property agreement or unilateral statement applies only if you file a copy with the Department of Revenue *before* an assessment or billing is issued.

If you filed a separate return and you are notified that your return is being audited, the Department of Revenue will request a copy of your marital property agreement or unilateral statement at that time.

In addition, a marital property agreement or unilateral statement applies only while both you and your spouse are domiciled in Wisconsin.

Example. You and your spouse sign a marital property agreement which states that the interest income from your savings accounts is your spouse's individual property. Both of you are domiciled in Wisconsin for all of 2005. You file

separate Wisconsin income tax returns for 2005. Per your marital property agreement, you don't report any interest income and your spouse reports \$600 of interest income, which your spouse thought was the total amount of interest income. According to information returns (1099 forms) filed by the bank, you actually had \$1,000 of interest income in 2005. This additional \$400 of interest income is reportable by your spouse if you file a copy of the marital property agreement with the Department of Revenue before any assessment is issued. If you don't furnish a copy of the agreement, \$500 of interest income is reportable by you and \$500 is reportable by your spouse.

Note. The Internal Revenue Service has indicated that it won't follow any marital property agreement that allocates more than half of your wages or the income from marital property titled in your name to your spouse. In the above example, you and your spouse must each report half (\$500) of the interest income on separate federal returns.

b. Part-Year Residents and Nonresidents

For Wisconsin income tax purposes, the marital property law applies only while both you and your spouse are domiciled in Wisconsin. During any period that you and your spouse aren't both domiciled in Wisconsin, you must report your income based on title and ownership under the common law property system. (See Part I.A.1. for more information about the common law property system.)

Example. You are a full-year Wisconsin resident and your spouse is a full-year Illinois resident in 2005. Stocks titled in your name produce \$10,000 of dividend income. This income generally would be marital property income reportable half by each spouse. Because your spouse is a nonresident, the marital property law doesn't apply. If you file separately, you must report the entire \$10,000 of dividend income on your separate Wisconsin income tax return.

c. Innocent Spouse Rule

Notification The Wisconsin and federal laws differ as to the determination of who is an "innocent spouse." For Wisconsin tax purposes, this determination is based on whether there is notification between spouses of the amount and

nature of marital property income over which each spouse has control. The Wisconsin income tax law doesn't require notification, nor does the law specify how you must notify your spouse. However, for notification to be timely, you must notify your spouse of the amount and nature of marital property income over which you have control before the due date, including extensions, for filing your Wisconsin income tax return. To be timely, your spouse must notify you of the amount and nature of marital property income over which your spouse has control before the due date, including extensions, for filing your spouse's Wisconsin income tax return.

- If both spouses' services and property produced marital property income and they timely notify each other of the amount and nature of this income, each spouse must report half of the combined marital property income on his/her separate Wisconsin returns. For example, if the husband's services and property produced \$15,000 of marital property income, the wife's services and property produced \$10,000 of marital property income, and each timely notifies the other, each spouse must report \$12,500 of marital property income.
- If both spouses' services and property produced marital property income but only one spouse timely notifies the other spouse of the amount and nature of this income, the notifying spouse must report half of the marital property income over which he or she had control. The notified spouse must report all of the marital property income over which he or she had control plus half of the marital property income over which the other spouse had control.

For example, if the husband's services and property produced \$15,000 of marital property income, the wife's services and property produced \$10,000 of marital property income, and the husband timely notifies the wife but the wife doesn't notify the husband, the husband must report \$7,500, which is half of the marital property income over which he had control. The wife must report \$17,500, which is all (\$10,000) of the marital property income her services and property produced plus half (\$7,500) of the marital property income her husband's services and property produced.

- If both spouses' services and property produced marital property income but neither spouse timely notifies the other of the amount and nature of this income, each spouse must report all of the marital property income over which he or she had control on their separate Wisconsin returns. The other spouse won't have any liability for this income. For example, if the husband's services and property produced \$15,000 of marital property income, the wife's services and property produced \$10,000 of marital property income, and neither spouse timely notifies the other spouse, the husband must report \$15,000 of marital property income on his separate Wisconsin return and the wife must report \$10,000 of marital property income on her separate Wisconsin return.

Should a dispute about notification occur, you will have to prove to the Wisconsin Tax Appeals Commission that you notified your spouse about the amount and nature of the marital property income your services and property produced. Since the law doesn't specify how you must notify your spouse, the department can't determine whether the notification was adequate.

Assessments in the Alternative Where a dispute between spouses over notification does exist, the department will assess both spouses for the disputed income. Such assessments are called "assessments in the alternative."

The department will assess each spouse for the entire amount due on marital property income when, in the department's opinion, more than one spouse could be held liable. The purpose of assessments in the alternative is to have the spouses mutually agree on the facts of notification. If the spouses are unable to agree, they may appeal the assessments to the Wisconsin Tax Appeals Commission. After a determination is made about whether notification was adequate, the assessments will be adjusted to reflect the correct amount due for each spouse.

Example. In 2005, your services produce \$20,000 of wages and you have \$1,000 of Wisconsin tax withheld. Your spouse's services produce \$15,000 of wages and your spouse has \$500 of Wisconsin tax withheld. You and your spouse file separate Wisconsin returns. You and your spouse each claim that you notified the other about the amount of the wages. However,

you each claim that you weren't notified about the amount of the other's wages. On your return, you report \$10,000 of wages and claim \$500 of tax withheld, which is half of your wages and withholding. Your spouse reports \$7,500 of wages and claims \$250 of tax withheld, which is half of your spouse's wages and withholding. The department will issue assessments in the alternative, as follows:

- You will be assessed the tax on an additional \$17,500 of income (your unreported wages of \$10,000 and your spouse's unreported wages of \$7,500).
- Your spouse will be assessed the tax on an additional \$17,500 of income (your spouse's unreported wages of \$7,500 and your unreported wages of \$10,000).

Note. The innocent spouse exception doesn't reclassify marital property income to individual income. The income remains marital property. The "innocent spouse" treatment does change the property from which the department may collect the debt. While the department may still collect the debt from marital property, it must first exhaust the obligated spouse's nonmarital property.

5. Differences Between Federal and Wisconsin Reporting of Marital Property Income

For federal income tax purposes, the laws of the state in which you are domiciled generally determine whether your income is marital property (community) income or individual (separate) income. However, the federal treatment of the exceptions discussed in Part II.B.4. differs from the Wisconsin treatment.

If you and your spouse live apart all year, for Wisconsin income tax purposes you must report your income under the marital property law unless one of the above three exceptions in Wisconsin law applies. Federal law differs in that if you live apart from your spouse at all times during the taxable year and meet three other conditions, you must disregard certain state community property laws for federal income tax purposes (generally called the "living apart all year rule"). *Wisconsin doesn't follow this federal treatment of spouses living apart all year.*

Your federal income is the starting point for figuring your Wisconsin taxable income. Because of these differences between Wisconsin and federal law, you

may be required to make adjustments (called “modifications”) to your federal income in order to arrive at your correct Wisconsin income. Examples of modifications which may be required for Wisconsin purposes follow.

Example 1. You and your spouse live apart all year. Your services produce \$25,000 of wages and your spouse’s services produce \$18,000 of wages. Neither you nor your spouse transfers any of the wages between yourselves before the end of the year. You and your spouse both notify the other about the amount of wages. For federal purposes, assume that you must disregard the marital property law and follow the federal living apart all year rule because certain conditions exist. Therefore, you report the \$25,000 of wages your services produced on your 2005 federal return. For Wisconsin purposes, you must report half of the wages your services produced and half of the wages your spouse’s services produced. Thus, you must make two modifications to your federal income to arrive at your correct Wisconsin income of \$21,500: (1) An addition modification for \$9,000 to include half of your spouse’s wages in your income; and (2) a subtraction modification for \$12,500 to exclude half of your wages from your income.

Example 2. You and your spouse live apart during the last three months of 2005. Your services produce \$2,000 of wages and your spouse’s services produce \$30,000 of wages. You timely notify your spouse, but claim that your spouse didn’t notify you about the amount of your spouse’s wages. For federal purposes, assume that you must follow the marital property law and report half of the combined marital property income. Therefore, you report \$16,000 of wages on your federal return (half of the wages your services produced and half of the wages your spouse’s services produced). For Wisconsin purposes, you assume that you qualify as an “innocent spouse.” Thus, you must make a subtraction modification for \$15,000 to exclude from your Wisconsin income your one-half interest in the wages your spouse’s services produced.

C. Losses, Expenses, Deductions, and Credits

How you treat your deductions generally depends on the type of expense and the reason it was incurred. If you and your spouse file separate returns, you must divide losses, depreciation, depletion, deductions, and expenses between you in the same manner as income would be divided, with certain exceptions. The federal treatment of the following items may differ from the Wisconsin treatment explained below.

1. Capital Losses

For Wisconsin income tax purposes, losses have the same character as the property from which the loss arose. For example, a loss on the sale of individual property, such as stock you inherited and held separately, is an “individual loss.” A loss on the sale of marital property is a “marital property loss.” A loss on the sale of unclassified property is an individual loss or a marital property loss depending on whether the capital gain income would be individual or marital property.

If you file separately, neither you nor your spouse may deduct any part of the other’s individual loss. In the case of a marital property loss, half is deductible by you and half is deductible by your spouse on separate returns.

Capital loss carryovers. If you and your spouse file a joint return, you must combine your capital loss carryovers. If you and your spouse file separate returns, any capital loss carryover can be deducted only on the return of the spouse who actually had the loss. For a capital loss carryover from a year before the marital property law applies to you, title to the property determines which spouse may deduct the loss. For a capital loss carryover from a year to which the marital property law applies, the classification of the property determines which spouse may deduct the loss.

2. Other Losses

Losses have the same character as income from the activity would have. For example, if income from a business is marital property income, a loss from that business is a marital property loss.

Net operating loss carryovers. If you and your spouse file a joint return, you can use both your and your spouse’s net operating loss carryovers to figure the deduction for 2005, provided you and your spouse were married to each other in the year of the loss. If you have a loss from before your marriage, you can apply the loss against only your income (as figured under marital property law) on a joint return. If you file separate returns, neither you nor your spouse may deduct any part of the other’s net operating loss carryover.

3. Business and Investment Expenses

If you file separately, you must generally divide expenses incurred to earn or produce marital property income in the same manner that the income is di-

vided. Allocate expenses incurred to earn or produce individual income to the spouse who owns that income.

4. Individual Retirement Arrangements and Self-Employed (Keogh) Retirement Plans

If you file separately, deductions for contributions to an individual retirement arrangement (IRA) or a self-employed retirement plan must be divided between you and your spouse in the same manner as the related income is divided on your separate Wisconsin returns.

For example, assume your spouse's services produced \$30,000 of wages and your spouse paid \$2,000 to an IRA. Also assume that your services produced \$1,500 of wages and you paid \$1,000 to an IRA. Proper notification occurred and each spouse will report one-half of the combined wages on his or her separate Wisconsin return. On separate returns, you can take an IRA deduction of \$1,500 and your spouse can take an IRA deduction of \$1,500.

5. Alimony

You can deduct qualifying alimony payments that you are required to make to your spouse during your marriage only to the extent that the payments plus the marital property income over which your spouse had control exceed your spouse's share of marital property income to which he or she would be entitled.

Example 1. You pay \$15,000 of alimony to your spouse during the year pursuant to a temporary order. Your services produced \$40,000 of wages during the year and your spouse's services did not produce any marital property income during the year, making your combined marital property income \$40,000. Since your spouse's share of marital property income to which she would be entitled is \$20,000, no part of the \$15,000 payment is deductible as alimony. Your payment merely gave your spouse control of the \$15,000, not ownership, which your spouse already had under the marital property law.

Example 2. You pay \$15,000 of alimony to your spouse during the year pursuant to a temporary order. Your services produced \$25,000 of wages during the year and your spouse's services did not produce any marital property income during the year, making your combined marital property income \$25,000. Your spouse's share of marital property income to which he would be entitled is

\$12,500. You may claim an alimony deduction of \$2,500 (\$15,000 minus \$12,500), the excess of your payments over your spouse's share of marital property income.

Example 3. You pay \$15,000 of alimony to your spouse during the year pursuant to a temporary order. Your services produced \$30,000 of wages during the year and your spouse's services produced \$10,000 of wages, making your combined marital property income \$40,000. Each spouse retained the wages his or her services produced.

Your alimony deduction is \$5,000 determined as follows:

Marital property income (wages) retained by your spouse	\$10,000
Alimony received by your spouse	<u>15,000</u>
Total marital property income over which your spouse had control	25,000
Spouse's share of marital property income (1/2 of \$40,000)	<u>20,000</u>
Amount in excess of spouse's share of marital property income	<u>\$5,000</u>

Thus you may deduct \$5,000 as alimony paid and your spouse must report \$5,000 as alimony received.

You can also deduct qualifying alimony payments that you can prove by tracing are payments from your individual income.

As indicated previously, the innocent spouse exception does not reclassify marital property income to individual income. Therefore, you can't qualify for an alimony deduction by failing to notify your spouse about the nature and amount of the marital property income your services and property produced. For example, assume that your services and property produced \$20,000 of marital property income, your spouse's services and property didn't produce any marital property income, and you pay \$7,000 of alimony to your spouse. If you don't notify your spouse about the nature and amount of the marital property income your services and property produced, you will be subject to tax on the entire \$20,000. However, you can't claim a deduction for alimony because you are merely giving your spouse control of marital property income which he or she already owned.

Qualifying alimony payments that you make after your divorce becomes final are deductible.

Qualifying alimony payments that you receive from your spouse during your marriage are taxable income to you to the extent the payments plus the marital property income over which you had control exceed your share of marital property income. Qualifying alimony payments from your spouse's individual income are also taxable to you. In addition, qualifying alimony payments that you receive after your divorce becomes final are taxable.

6. Deduction for Exemptions

If you file a separate return, you can't take your spouse's \$700 personal exemption or the additional \$250 exemption if your spouse is age 65 or over. This is true even if your spouse had no income and wasn't the dependent of another taxpayer.

If you and your spouse file separate returns, you can't divide the \$700 exemption for a dependent between you. When you have more than one dependent, you may divide the number of dependents between you if they are supported with marital property funds. You may take the \$700 exemption only for dependents claimed on your return.

Example. You and your spouse support three dependent children with marital property funds. On separate returns, you may divide the dependents between you. If you claim two dependents, your spouse can claim one dependent. In this case, you would take a \$1,400 exemption for dependents and your spouse would take a \$700 exemption for dependents. You can't divide the total exemption for dependents (\$2,100) equally between you. You must divide the exemption into multiples of \$700 (a full exemption).

7. Wisconsin Itemized Deduction Credit

The Wisconsin itemized deduction credit is based on certain amounts which are allowed as itemized deductions for federal purposes. Under federal law, the nature of the obligation and the source of the funds used to make payment generally determine how to treat the expenses on separate returns. Obligations for which an itemized deduction credit may be claimed generally are considered as being incurred in the interest of the marriage or the family and paid from marital property funds. As such, half of the amount paid is generally allocated to each spouse for purposes of figuring the itemized deduction credit on separate returns.

Divide investment interest expenses incurred to earn marital property income equally between you. Allo-

cate investment interest expense incurred to produce individual income to the spouse who owns that income, provided the expense was paid from individual property.

8. Renter's School Property Tax Credit

If you and your spouse file separate returns, figure your renter's credit as follows:

- If you and your spouse shared rented living quarters, each may take a renter's credit based on half of the rent paid.
- If you and your spouse maintained separate homes, each may take a renter's credit based on the rent each paid for the separate living quarters.

Note: If you and your spouse maintained separate homes all year, you lived in a home owned equally by you and your spouse, and you paid all of the taxes on that home, you may claim your spouse's share of the taxes as rent. As indicated below, your spouse can't take a credit based on his or her share of the property taxes on the home that you occupied since that home wasn't your spouse's principal residence.

On your separate return, the total of your renter's and homeowner's credits can't be more than \$150. You can't claim any part of your spouse's credit.

9. Homeowner's School Property Tax Credit

Your homeowner's credit is based on your share of the taxes paid (even if you personally didn't make the payment), but limited to the time that you occupied the home as your principal home. Since the marital property law presumes that all property of spouses is marital property, half of the taxes paid would normally be your share. If you contend that the home isn't marital property, you must prove that the home's classification is something else. If you file separately, figure your homeowner's credit as follows:

- If you and your spouse lived together, each may take a credit based on half of the taxes paid on your principal home.
- If you and your spouse maintained separate homes, each may take a credit based on half of the taxes on the home each occupied. (Note: If you can show that your home isn't marital prop-

erty, you may claim all of the taxes on the home you owned and occupied as your principal home.)

On your separate return, the total of your renter's and homeowner's credits can't be more than \$150. You can't claim any part of your spouse's credit.

10. Married Couple Credit

You can't claim the married couple credit if you and your spouse file separate returns. You can't claim this credit if you were legally separated under a final decree of divorce or separate maintenance on December 31, 2005.

Your earned income for purposes of the married couple credit is computed without regard to the marital property law.

11. Earned Income Credit

The Wisconsin earned income credit is a percentage of the federal earned income credit, based on the number of qualifying children.

To qualify for the credit, your filing status must be single, head of household or married filing a joint return. You **cannot** take the credit if your filing status is married filing separate return.

For purposes of the earned income credit, your earned income is computed without regard to the marital property law.

Caution: The Wisconsin earned income credit must be based on a federal earned income credit which has been computed using a federal filing status which is the same as your Wisconsin filing status. For example, your spouse files a federal return using the "married filing separately" filing status. You file a federal return as "head of household" and claim the federal earned income credit. If you and your spouse file a "joint" Wisconsin return, your Wisconsin earned income credit must be based on the federal earned income credit which would be allowable if you had filed a "joint" federal return.

12. Farmland Preservation Credit

For information about claiming farmland preservation credit, see Publication 503, *Wisconsin Farmland Preservation Credit*, which may be obtained from any Department of Revenue office or from our Internet web site at www.dor.state.wi.us.

13. Farmland Tax Relief Credit

Only one member of a household may claim the farmland tax relief credit. Household means an individual, his or her spouse, and all dependents while they are under age 18. For example, if you and your spouse file separate returns and each qualifies for the credit, you must decide which spouse will claim the credit. The property taxes to be used in the credit computation include both spouses' total applicable taxes on farmland for the entire year.

14. Manufacturer's Sales Tax Credit

The manufacturer's sales tax credit is based on the amount of sales and use tax paid on fuel and electricity consumed in manufacturing in Wisconsin. The credit may be offset only against the tax imposed upon or measured by the business operations in which the fuel and electricity were consumed.

If you and your spouse file separate returns, each may claim a credit based on his or her share of the income and expenses reported on his or her return from the business in which the fuel and electricity were consumed.

15. Dairy Investment Credit

The dairy investment credit is based on the amount paid for depreciable property used exclusively for dairy farm modernization or expansion.

If you and your spouse file separate returns, each spouse may claim a portion of the total credit based on his or her share of the income and expenses reported on his or her return from the dairy farm.

16. Veterans and Surviving Spouses Property Tax Credit

Certain veterans who have a service-connected disability rating of 100% may qualify for the veterans and surviving spouses property tax credit.

If you and your spouse file separate returns and the principal dwelling is owned by an eligible veteran and his/her spouse as joint tenants, tenants-in-common, or as marital property, each spouse may claim the credit based on their respective ownership interest in the eligible veteran's principal dwelling.

D. Tax Payments

1. Wisconsin Income Tax Withheld

Report the credit for Wisconsin income tax withheld on marital property wages in the same manner as you report your wages. If you and your spouse file separate returns and each of you reports half of the combined wages, each of you may claim half of the income tax withheld on those wages. Attach a copy of each wage statement (W-2 form) for both spouses to your separate returns. If you don't have enough copies of your W-2 forms for both returns, you may attach legible photocopies.

2. Wisconsin Estimated Tax Payments

Whether you and your spouse pay estimated tax jointly or separately, you have a choice of filing joint or separate income tax returns for the year.

Joint estimated tax payments. If you and your spouse paid estimated tax jointly, but want to file separate Wisconsin income tax returns, either of you may claim all of the estimated tax paid, or you may each claim part of it. You can divide joint estimated tax payments in any way that you agree upon. If you can't agree, you must divide the joint estimated tax payments in proportion to each spouse's individual tax as shown on your separate Wisconsin returns, or the Department of Revenue will divide the payments based on estimates of the amounts you and your spouse will owe. Your tax is the amount shown on 2005 Wisconsin Form 1, line 31 (Form 1A, line 24 or Form 1NPR, line 57).

Example. You made \$2,000 of joint estimated tax payments for 2005. You and your spouse can't agree on how to divide the payments on your separate returns. You show tax of \$1,500 on Wisconsin Form 1. Your spouse shows tax of \$900 on Wisconsin Form 1. You can claim \$1,250 of estimated tax, which you figure as follows:

$$\begin{array}{rcl} \$1,500 \text{ tax shown on} & & \\ \text{your return} & \times & \$2,000 \text{ joint} \\ \hline \$2,400 \text{ total tax shown} & & \text{estimated tax} \\ \text{on your return and} & & \text{payments} \\ \text{your spouse's return} & & \\ \hline & = & \$1,250 \end{array}$$

Your spouse can claim \$750 of estimated tax.

These rules also apply if you made joint estimated tax payments and you became divorced in 2005.

Separate estimated tax payments. If you made separate estimated tax payments, you can claim them on a joint return or on your separate return. Your spouse can't claim any part of your separate estimated tax payments on his or her separate return. You can't claim any part of your spouse's separate estimated tax payments on your separate return.

E. Refunds

1. Claims for Refund

If you and your spouse are claiming a refund either on your original joint return or on an amended joint return, both of you must sign the return. If you are claiming a refund either on your original separate return or on an amended separate return, you alone must sign the return.

Marital property agreements and unilateral statements don't affect claims for refund.

The Department of Revenue will issue a refund relating to a joint return jointly to both spouses. The Department of Revenue will issue a refund relating to a separate return to the spouse who filed the return.

Exception. *Persons divorced on or after October 19, 1999* - If your judgment of divorce apportions any refund to you or your former spouse, or between you and your former spouse, the department will issue the refund to the person(s) to whom the refund is awarded under the terms of the divorce. Attach a copy of the portion of your judgment of divorce that relates to the apportionment of the tax refund to your return.

2. Applying Overpayments Against Liabilities

Wisconsin's income tax law permits the Department of Revenue to apply overpayments, refundable credits, or refunds against certain tax debts, debts owed to other state agencies, municipalities or counties, or delinquent child support. However, the nonobligated spouse may claim a refund from the Department of Revenue within specified periods of time upon proof that all or part of the amounts credited were the nonmarital property of the nonobligated spouse.

Note. The department may not apply an overpayment, credit, or refund otherwise due an individual against any tax liability owed to the department by the individual or by a former spouse of the individual if (1) a judgment of divorce apportions that

liability to the former spouse of the individual and (2) the individual includes with his or her tax return a copy of the judgment of divorce. This applies to a judgment of divorce entered on or after June 21, 1996.

Joint returns. The Department of Revenue may apply an income tax overpayment, refundable credit, or refund on a joint return as follows:

- Against any liability from a joint return.
- Against any separate liability incurred during marriage by either you or your spouse after the determination date.
- Against any separate liability incurred by either you or your spouse before January 1, 1986, or before marriage, to the extent that the overpayment or refund is based on the Wisconsin adjusted gross income which would have been the property of the incurring spouse if you hadn't married.

Nonjoint returns. The Department of Revenue may apply an income tax overpayment, refundable credit, or refund on your separate or individual return against any liability incurred by you, including any liability from a joint return.

Note. If the "innocent spouse" rule applies, or in the case of a remarriage, special limitations may apply. For more information, see Wisconsin Publication 113, *Federal and Wisconsin Income Tax Reporting Under the Marital Property Act*.

F. Extensions

In order to obtain a Wisconsin extension of time to file, you must attach either a copy of your federal extension request or a statement indicating which federal extension provision you want to use for Wisconsin to your Wisconsin return when you file.

If you and your spouse file separate returns, you must each obtain an extension. An extension of time allowed to you for filing your separate return doesn't extend the time for filing the separate return of your spouse.

G. Wisconsin Income Tax Examples

Following are three examples which show how to figure your Wisconsin income tax under the marital property law.

1. Both Spouses Domiciled in Wisconsin All Year

A husband and wife are married and domiciled in Wisconsin for all of 2005. Their two children and the wife's mother live with them and qualify as dependents. Amounts paid for their support were paid out of marital property funds.

The husband's services and property produced \$22,000 of wages and \$150 of interest income in 2005. Wisconsin income tax withheld from his wages was \$1,160.

In 2005, the wife's services and property produced \$10,000 of wages, \$50 of interest income, and \$270 of dividend income. She also earned \$3,600 of net rental income (after expenses) from individual property. The wife paid \$500 to an IRA. Wisconsin income tax withheld from her wages was \$250.

The husband and wife paid \$8,400 of interest on their Wisconsin home mortgage loan. They had \$3,100 of medical expenses and \$1,500 of charitable contributions. They paid \$1,200 of property taxes on their home, which is titled as marital property. All amounts were paid out of marital property funds.

To see if it is to their advantage to file a joint return or separate returns, they prepare a worksheet (Worksheet 1, shown on page 17) to figure their Wisconsin income tax. The worksheet shows that it is to the taxpayers' advantage to file a joint Wisconsin income tax return.

How to figure the amounts shown on Worksheet 1.

- The husband's wages and interest income are marital property income. Half is reported on each separate return.
- The wife's wages, interest income, and dividends are marital property income. Half is reported on each separate return.
- Although the rental property is the wife's individual property, the net rental income is marital property income and half is reported by each spouse on their separate returns.
- The IRA deduction is based on the wife's wages. Since each spouse is reporting one-half of those wages, each spouse is allowed one-half of the IRA deduction on a separate return.
- The standard deduction is from the Standard Deduction Table in the Form 1 booklet.

- On their separate returns, the husband chose to claim two dependents and the wife chose to claim one dependent. The deduction for exemptions is thus \$2,100 for the husband and \$1,400 for the wife.
- The tax on their joint return is from the married filing jointly column of the Tax Table. The tax on their separate returns is from the married filing separately column of the Tax Table.
- Wisconsin home mortgage loan interest, medical expenses, and charitable contribution, are divided equally between the spouses to figure the Wisconsin itemized deduction credit on their separate returns.
- Since the home is marital property, the property taxes are divided equally between the spouses.
- The married couple credit is 3% of the wife's qualified earned income of \$9,500 (\$10,000 of wages minus \$500 IRA deduction). They can't claim this credit if they file separate returns.
- Since the husband's wages and the wife's wages are divided equally between the spouses, their Wisconsin income tax withheld is also divided equally between them on their separate returns.
- It's assumed that timely notification took place.

WORKSHEET 1

Both Spouses Domiciled in Wisconsin All Year

	Wisconsin Joint Return	Wisconsin Separate Returns	
		Husband	Wife
Income (Husband's)			
Wages	\$ 22,000	\$ 11,000	\$ 11,000
Interest income	<u>150</u>	<u>75</u>	<u>75</u>
Total	\$ 22,150	\$ 11,075	\$ 11,075
Income (Wife's)			
Wages	\$ 10,000	\$ 5,000	\$ 5,000
Interest income	50	25	25
Dividends	270	135	135
Net rental income	3,600	1,800	1,800
IRA deduction	<u>(500)</u>	<u>(250)</u>	<u>(250)</u>
Total	<u>13,420</u>	<u>6,710</u>	<u>6,710</u>
Wisconsin income	\$ 35,570	\$ 17,785	\$ 17,785
Standard deduction	<u>10,907</u>	<u>5,032</u>	<u>5,032</u>
	\$ 24,663	\$ 12,753	\$ 12,753
Deduction for exemptions	<u>3,500</u>	<u>2,100</u>	<u>1,400</u>
Wisconsin taxable income	\$ 21,163	\$ 10,653	\$ 11,353
Tax from Tax Table	\$ 1,118	\$ 564	\$ 607
Wisconsin itemized deduction credit	\$ 0	\$ 6	\$ 8
School property tax credit	146	74	74
Married couple credit	<u>285</u>	<u>0</u>	<u>0</u>
Total credits	<u>431</u>	<u>80</u>	<u>82</u>
Net tax	\$ 687	\$ 484	\$ 525
Less: Wisconsin income tax withheld	<u>1,410</u>	<u>705</u>	<u>705</u>
Amount due (Refund)	<u>\$ (723)</u>	<u>\$ (221)</u>	<u>\$ (180)</u>

2. One Spouse Domiciled in Wisconsin All Year

A husband and wife are married for all of 2005. The husband is domiciled in Florida from January through March, and he is domiciled in Wisconsin for the rest of the year. The wife is domiciled in Wisconsin all year. Their determination date is April 1, 2005. Their child lives with the wife all year and qualifies as their dependent. From January through March, the spouses contributed equally to their child's support. After that time, the child's support was paid out of marital property funds.

The husband's services and property produced the following income: (1) \$8,000 of wages while he was domiciled and employed in Florida and \$25,000 of wages while domiciled in Wisconsin, and (2) \$400 of interest income from a Florida savings account from January through March and \$700 for the rest of the year. Wisconsin income tax withheld from his wages was \$1,760.

The wife's services and property produced the following income: (1) \$1,300 of wages from January through March and \$3,700 for the rest of the year, (2) \$1,200 of interest income from January through March and \$4,200 for the rest of the year, and (3) \$1,400 of dividend income from January through March and \$1,100 for the rest of the year. Wisconsin income tax withheld from her wages was \$20 from January through March and \$30 for the rest of the year. She made separate estimated tax payments of \$600.

The spouses had the following expenses: (1) \$6,500 of home mortgage loan interest. Both spouses are obligated on the mortgage. From January through March, the payments were made from a joint checking account to which the spouses had contributed equally. For the rest of the year, the payments were made from marital property funds. (2) \$500 of deductible investment interest expense which was paid after April 1, 2005, using marital property funds. (3) \$350 of charitable contributions made from April through December using marital property funds. (4) \$2,000 of property taxes paid on their Wisconsin home in December using marital property funds. The spouses had originally held title to their home as joint tenants, but they reclassified it as survivorship marital property on April 1, 2005. (5) \$2,000 of rent, which didn't include heat, paid by the husband on an apartment in Florida.

To see if it is to their advantage to file a joint return or separate returns, they prepare a worksheet (Worksheet 2 on page 20) to figure their Wisconsin

income tax. The worksheet shows that it is to the taxpayers' advantage to file a joint return.

Note. Both spouses must be domiciled in Wisconsin before the marital property law applies to them.

How to figure the amounts shown on Worksheet 2.

- The husband's wages and interest income earned while domiciled in Wisconsin are marital property income. Half is reported on each separate return.
- The wife reports the \$1,300 of wages, \$1,200 of interest income, and \$1,400 of dividend income she earned from January through March on her separate return. Since her husband wasn't domiciled in Wisconsin during this time, the marital property law doesn't apply to her for federal or Wisconsin income tax purposes. The wife's \$3,700 of wages, \$4,200 of interest income, and \$1,100 of dividend income for the rest of the year are marital property income. Half is reported on each separate return.
- For purposes of computing tax, nonresidents and part-year residents start with the larger of federal income or Wisconsin income. Therefore, on their joint return, their joint federal income of \$47,000 is used in the computation of tax. On the husband's separate return, his separate federal income of \$25,750 is used in the computation of tax.
- On their joint return, the standard deduction is from the married filing jointly column of the Standard Deduction Table in the Form 1NPR booklet and is based on their joint federal income of \$47,000.
- On the husband's separate return, the standard deduction is from the married filing separately column of the Standard Deduction Table in the Form 1NPR booklet and is based on his separate federal income of \$25,750.
- On the wife's separate return, the standard deduction is from the married filing separately column of the Standard Deduction Table in the Form 1 booklet.
- On their joint return, the deduction for exemptions is \$2,100 (\$700 for each spouse plus \$700 for their dependent).
- On the husband's separate return, the husband claims an exemption of \$700 for himself.
- On her separate return, the wife claims an exemption of \$700 for herself and \$700 for their

child who the wife claims as a dependent. Since their child is supported equally by the spouses prior to April 1 and with marital property funds after that date, either spouse can claim the child as a dependent.

- On their joint return, the tax is from the married filing jointly column of the Tax Table in the Form 1NPR booklet for nonresidents and part-year residents.
- On the husband's separate return, the tax is from the married filing separately column of the Tax Table in the Form 1NPR booklet for nonresidents and part-year residents.
- On the wife's separate return, the tax is from the married filing separately column of the Tax Table in the Form 1 booklet for full-year Wisconsin residents.
- Wisconsin home mortgage loan interest, investment interest, and charitable contributions are divided equally between the spouses to figure the Wisconsin itemized deduction credit on their separate returns.
- Since the husband paid for his heat separately from his rent, his renter's credit is from column 2 of the Renter's School Property Tax Credit Table.
- On their joint return, the homeowner's credit is based on \$1,750 of the property taxes paid. Since the home was joint tenancy property prior to April 1 and survivorship marital property after that date, the property taxes paid are divided equally between the spouses (\$1,000 to each spouse). The husband's share of the taxes is then limited to the number of months that he occupied the home as his principal home ($9/12 \times \$1,000 = \750).
- On the husband's separate return, the homeowner's credit is based on \$750 of property taxes paid but limited to \$88 (\$150 minus \$62 renter's credit).
- On the wife's separate return, the homeowner's credit is based on \$1,000 of property taxes paid.
- On their joint return, they must prorate the tax less the itemized deduction credit and the renters and homeowner's school property tax credits based on the ratio of their joint Wisconsin income to their joint federal income ($\$38,600/\$47,000 \times \$1,804 = \$1,482$).
- On his separate return, the husband must prorate his tax less the itemized deduction credit and the renters and homeowner's credits based on the ratio of his Wisconsin income to his federal income ($\$17,350/\$25,750 \times \$1,057 = \712).
- No proration is required on the wife's separate return because she is domiciled in Wisconsin all year.
- The married couple credit is 3% of the wife's wages of \$5,000. They can't claim this credit if they file separate returns.
- The husband's Wisconsin income tax withheld of \$1,760 is divided equally between them on their separate returns. The wife claims her Wisconsin income tax withheld from January through March of \$20. Since her wages for the rest of the year are marital property income, her withholding for the rest of the year of \$30 is divided equally between them on their separate returns.
- The husband can't claim any part of the wife's separate estimated tax payments on his separate return.
- It's assumed that timely notification took place.

WORKSHEET 2**One Spouse Domiciled in Wisconsin All Year**

	Wisconsin Joint Return	Wisconsin Separate Returns	
		Husband	Wife
Income (Husband's)			
Wisconsin wages	\$ 25,000	\$ 12,500	\$ 12,500
Wisconsin interest income	<u>700</u>	<u>350</u>	<u>350</u>
Total	\$ 25,700	\$ 12,850	\$ 12,850
Income (Wife's)			
Wages	\$ 5,000	\$ 1,850	\$ 3,150
Interest income	5,400	2,100	3,300
Dividends	<u>2,500</u>	<u>550</u>	<u>1,950</u>
Total	<u>12,900</u>	<u>4,500</u>	<u>8,400</u>
Wisconsin income	\$ 38,600	\$ 17,350	\$ 21,250
Federal income	47,000	25,750	
Standard deduction	<u>8,632</u>	<u>3,450</u>	<u>4,340</u>
	\$ 38,368	\$ 22,300	\$ 16,910
Deduction for exemptions	<u>2,100</u>	<u>700</u>	<u>1,400</u>
Taxable income	\$ 36,268	\$ 21,600	\$ 15,510
Tax	\$ 2,091	\$ 1,275	\$ 878
Wisconsin itemized deduction credit	\$ 13	\$ 68	\$ 0
Renter's school property tax credit	62	62	0
Homeowner's school property tax credit	<u>212</u>	<u>88</u>	<u>122</u>
Total credits	<u>287</u>	<u>218</u>	<u>122</u>
Tax less credits	\$ 1,804	\$ 1,057	\$ 756
Prorated amount	1,482	712	
Married couple credit	<u>150</u>	<u>0</u>	<u>0</u>
Net tax	\$ 1,332	\$ 712	\$ 756
Less: Wisconsin income tax withheld	1,810	895	915
Estimated tax payments	<u>600</u>	<u>0</u>	<u>600</u>
Amount due (Refund)	<u>\$ (1,078)</u>	<u>\$ (183)</u>	<u>\$ (759)</u>

3. Spouses Divorced During 2005

A husband and wife are domiciled in Wisconsin for all of 2005. They became separated in February 2005 and were divorced on September 16, 2005. Their three children live with the wife all year and qualify as dependents. The wife signs a written declaration that she will not claim them as dependents.

The husband's services and property produced the following income: (1) \$29,000 of wages from January through September 15, 2005, and \$15,000 for the rest of the year, and (2) \$2,000 of interest income from January through September 15 and \$500 for the rest of the year. In addition, his share of partnership income was \$5,000, of which \$3,550 was allocated to the period from January through Sep-

tember 15. The husband paid \$4,000 of alimony, pursuant to a temporary court order, prior to September 15 and none after that date. Wisconsin income tax withheld from his wages was \$1,000 from January through September 15 and \$970 for the rest of the year. He made separate estimated tax payments of \$750.

The wife's services produced \$8,000 of wages from January through September 15 and \$5,000 for the rest of the year. Wisconsin income tax of \$240 was withheld from her wages from January through September 15 and \$220 was withheld for the rest of the year.

The wife paid \$2,500 of property taxes on their home in December 2005. The wife lived in the home

all year, but the husband lived there only until March 1. The home was titled as marital property, but was awarded to the wife as part of the divorce settlement. The husband paid rent of \$5,000, which included heat, from March through December.

They prepare a worksheet (Worksheet 3, shown on this page) to figure their Wisconsin income tax. They must file individual returns since on December 31, 2005, neither is married. The amounts shown on Worksheet 3 assume that timely notification took place and are figured as follows:

- The husband's wages, interest income, and partnership income earned through September 15 are marital property income. The wife doesn't challenge this allocation of partnership income. Half is reported on each individual return.
- The wife's wages earned through September 15 are marital property income. Half is reported on each individual return.
- The husband may not claim a deduction for alimony and the wife doesn't report the alimony as income.
- The husband's standard deduction is from the single column of the Standard Deduction Table. The wife qualifies to file as head of household and her standard deduction is from the head of household column of the Standard Deduction Table.
- The husband and wife are each entitled to an exemption of \$700. Since the husband claims the three children as dependents, he is allowed an additional exemption of \$700 for each of the three children.
- The husband's tax is from the single column of the Tax Table. The wife qualifies to file as head of household and her tax is from the head of household column of the Tax Table.
- Since the husband's rent included heat, his renter's credit is from column 1 of the Renter's School Property Tax Credit Table.
- Since the wife paid the property taxes, she may claim a renter's credit based on the husband's share of the property taxes for the 6 1/2 months that he owned but didn't occupy the home ($1/2 \times 6.5/12 \times \$2,500 = \$677$).
- On the wife's return, the homeowner's credit is based on \$1,615 of the property taxes paid (\$2,500 minus \$885 allocated to the husband). The property taxes for 8 1/2 months are divided equally between the spouses (\$885). In addition, the wife may claim the property taxes for the 3 1/2

months that she was the sole owner ($3.5/12 \times \$2,500 = \730).

- Since the husband's and wife's wages from January through September 15 are divided equally between the spouses, their Wisconsin income tax withheld during that time is also divided equally between them. Each spouse claims his or her own withholding for the rest of the year.
- The wife can't claim any part of the husband's separate estimated tax payments.

WORKSHEET 3
Spouses Divorced During 2005

Wisconsin Individual Returns

	Husband	Wife
Income (Husband's)		
Wages		
Jan. 1 – Sept. 15	\$14,500	\$14,500
Sept. 16 – Dec. 31	15,000	0
Interest Income		
Jan. 1 – Sept. 15	1,000	1,000
Sept. 16 – Dec. 31	500	0
Partnership income		
Jan. 1 – Sept. 15	1,775	1,775
Sept. 16 – Dec. 31	<u>1,450</u>	<u>0</u>
Total	\$34,225	\$ 17,275
Wages (Wife's)		
Jan. 1 – Sept. 15	\$ 4,000	\$ 4,000
Sept. 16 – Dec. 31	<u>0</u>	<u>5,000</u>
Total	<u>4,000</u>	<u>9,000</u>
Wisconsin income	\$38,225	\$ 26,275
Standard deduction	<u>4,992</u>	<u>7,290</u>
	33,233	\$ 18,985
Deduction for exemptions	<u>2,800</u>	<u>700</u>
Wisconsin taxable income	\$30,433	\$ 18,285
Tax	\$ 1,780	\$ 987
Renter's school property tax credit	\$ 121	\$ 20
Homeowner's school property tax credit	<u>26</u>	<u>194</u>
Total credits	<u>147</u>	<u>214</u>
Net tax	\$ 1,633	\$ 773
Less: Wisconsin income tax withheld		
Husband's		
Jan. 1 – Sept. 15	\$ 500	\$ 500
Sept. 16 – Dec. 31	970	0
Wife's		
Jan. 1 – Sept. 15	120	120
Sept. 16 – Dec. 31	<u>0</u>	<u>220</u>
Total	1,590	840
Estimated tax payments	<u>750</u>	<u>0</u>
Amount due (Refund)	<u>\$ (707)</u>	<u>\$ (67)</u>

III. FIGURING YOUR HOMESTEAD CREDIT UNDER WISCONSIN'S MARITAL PROPERTY LAW

For homestead credit purposes, you must generally figure your household income, property taxes accrued, and rent constituting property taxes accrued under the marital property law. If you and your spouse lived together in 2005, only one of you may file a homestead credit claim for 2005. If you and your spouse maintained separate homes on December 31, 2005, or if you became divorced in 2005, you may each file a separate homestead credit claim for 2005.

A. Household Income

1. Figuring Household Income Under the Marital Property Law

If you lived with your spouse for all of 2005, you must combine your income with your spouse's income to figure your total household income. (Only one of you can file a homestead credit claim.)

If you and your spouse maintained separate homes on December 31, 2005, or if you became divorced in 2005, you must figure your total household income as follows:

- The combined income of you and your spouse while married and maintaining the same home, plus
- Your income (as figured under Wisconsin's marital property law, with certain exceptions described later) while married but maintaining a separate home, plus
- Your income while unmarried.

Your income while married but maintaining a separate home is generally half of the total marital property income of you and your spouse, plus all of your individual income for that period of time.

If you and your spouse live together all year, your household income for homestead credit purposes generally is the same regardless of whether you file a joint or a separate income tax return.

2. Exceptions to Figuring Household Income Under the Marital Property Law

- You can't use marital property agreements and unilateral statements to figure your household income for homestead credit purposes. There may be a difference between the amount of income you

must report on your Wisconsin income tax return and the amount you must report on your homestead credit claim.

Example. You and your spouse maintained separate homes all year. You and your spouse have a marital property agreement which states that wages are the individual property of the wage earner. Your services produced \$5,000 of wages and your spouse's services produced \$15,000 of wages. For Wisconsin income tax purposes, you reported \$5,000 of wages based on your marital property agreement. For homestead credit purposes, you must report \$10,000 of wages (half of \$20,000 combined wages) assuming notification occurred. This is true even though you don't receive control of more than \$5,000 of income.

- You must figure your household income without regard to the marital property law during any period of time that your spouse isn't domiciled in Wisconsin.

Example. Your services produced wages of \$12,000. Your spouse's services produced wages of \$10,000. Your spouse is a full-year Rhode Island resident. For both Wisconsin income tax and homestead credit purposes, you must report \$12,000 of wages.

- You must figure certain household income without regard to the marital property law if you don't notify your spouse of the amount and nature of the marital property income your services and property produced. Also, you must figure your household income without regard to certain marital property income if your spouse doesn't notify you of the amount and nature of the marital property income his or her services and property produced.

Example. You and your spouse maintained separate homes all year. Your services produced \$15,000 of wages. If you notify your spouse of the amount of wages your services produced, you would report half of your wages (\$7,500) for both Wisconsin income tax and homestead credit purposes. Your spouse must report the other half of the wages your services produced. If you don't notify your spouse of the wages your services produced, you must report all of the wages (\$15,000) for both Wisconsin income tax and homestead credit purposes. If your spouse notifies you of the amount of income his or her services and property produced, you must also include half of that in-

come in your income for Wisconsin income tax and homestead credit purposes.

B. Property Taxes Accrued

The marital property law presumes that all property of spouses is marital property. If you contend that property isn't marital property, you must prove that the property's classification is something else.

If you lived with your spouse for all of 2005 in a home owned by either or both of you, you can claim the entire amount of property taxes accrued on your home. (Only one of you can file a homestead credit claim.)

If you and your spouse maintained separate homes on December 31, 2005, or if you became divorced in 2005, you must figure your property taxes accrued on your home as follows:

- The total amount of property taxes on your home for the period of time you and your spouse maintained the same home, plus
- Half of the property taxes on your home for the period of time while married but maintaining a separate home, plus
- Your share (based on title) of the property taxes on your home for the period of time you are unmarried.

During your marriage, title generally doesn't determine ownership of your home between you and your spouse for homestead credit purposes. In addition, you can't use a marital property agreement or unilateral statement to figure property taxes accrued for homestead credit purposes.

Example 1. You are married but don't live with your spouse at any time during 2005. You live in a home which is titled in joint tenancy with your spouse. You pay the entire amount of property taxes (\$800). You can claim \$500 as property taxes accrued and rent constituting property taxes accrued. You are allowed one-half of the property taxes (\$400) as property taxes accrued. You are allowed one-fourth of the remaining property taxes paid (\$100) as rent constituting property taxes accrued. The result is the same if the home is titled as marital property or is titled solely in your name or solely in your spouse's name but is classified as marital property.

Example 2. You are married but don't live with your spouse at any time during 2005. You live in a home which is titled in your spouse's name. On December 31, 1985, you and your spouse signed a marital property agreement which states that you can claim all of the property taxes paid on the home for income tax and

homestead credit purposes. You pay the 2005 taxes of \$800. Since such an agreement doesn't affect your homestead credit, you can claim \$500 as property taxes accrued and rent constituting property taxes accrued. You are allowed one-half of the property taxes (\$400) as property taxes accrued. You are allowed one-fourth of the remaining property taxes paid (\$100) as rent constituting property taxes accrued.

C. Rent Constituting Property Taxes Accrued

If you lived with your spouse for all of 2005 in rented living quarters, you can claim the entire amount of rent paid. (Only one of you can file a homestead credit claim.)

If you and your spouse maintained separate homes on December 31, 2005, or if you became divorced in 2005, you must figure your rent constituting property taxes accrued as follows:

- The total amount of rent paid on your living quarters for the period of time you and your spouse maintained the same home, plus
- The total amount of rent you paid on your own living quarters while married and maintaining a separate home or while unmarried.

D. Homestead Credit Examples

Following are three examples which show how to figure your household income, property taxes accrued, and rent constituting property taxes accrued if you and your spouse maintained separate homes on December 31, 2005, or became divorced during the year.

1. Separate Homes on December 31, 2005

A husband and wife resided in their jointly-titled home from January 1 to July 31, when the wife moved permanently to a nursing home. The husband paid all of the property taxes for the year of \$600. The wife paid rent for occupancy, not including food, at the nursing home for the period August 1 through December 31 of \$500. The husband's services and property produced income of \$4,500 from January 1 through July 31, and \$4,000 for the rest of the year. The wife's services and property produced income of \$1,500 from January 1 through July 31, and \$3,000 for the rest of the year. Both husband and wife qualify for homestead credit. Figure household income, property taxes accrued, and rent constituting property taxes accrued applicable to each spouse as shown on page 24.

Note. The income and taxes for the time the spouses shared the same home are reported on both homestead credit claims. The husband may claim 25% of the wife's share of property taxes for the period she didn't live in their home, since he paid the tax.

	Husband	Wife
Household Income		
(H) January 1- July 31	\$4,500	\$4,500
(W) January 1- July 31	1,500	1,500
(H) August 1- December 31	2,000	2,000
(W) August 1- December 31	<u>1,500</u>	<u>1,500</u>
Total Household Income	<u>\$9,500</u>	<u>\$9,500</u>

Property Taxes Accrued		
(H) January 1- July 31		
(7/12 x \$600 x 1/2)	\$ 175	\$ 175
(W) January 1- July 31		
(7/12 x \$600 x 1/2)	175	175
(H) August 1- December 31		
(5/12 x \$600 x 1/2)	125	0
(W) August 1- December 31	(see below)	<u>0</u>
Total Property Taxes Accrued	\$ 475	\$ 350

Rent Constituting Property Taxes Accrued		
(H) 25% of wife's share of property taxes paid by husband for the period August 1 - December 31		
(5/12 x \$600 x 1/2) x 25%	\$ 31.25	0
(W) 20% of rent paid for occupancy only (20% x \$500)	<u>0</u>	<u>\$ 100</u>
Total Allowable Taxes and Rent	<u>\$506.25</u>	<u>\$ 450</u>

2. Spouses Live Apart All Year

A husband and wife maintained separate homes all year. The husband resided in the family home, which was acquired prior to January 1, 1986, and was solely titled in his name. The home was fully paid for prior to January 1986, and no improvements were made after that date. He paid all of the property taxes for the year of \$700. The wife resided in a nursing home for the entire year and paid rent for occupancy, not including food, of \$3,000. The husband's income was \$6,000 of social security and \$3,000 of pension income attributable to employment prior to 1986. The wife's income was \$5,000 of social security benefits. Both husband and wife qualify for homestead credit. Figure household income, property taxes accrued, and rent constituting property taxes accrued applicable to each spouse as shown below.

Note: The home is not classified by the marital property law since it was acquired prior to January 1, 1986, and there has been no subsequent marital property mixing. All of the household income is classified as individual income.

	Husband	Wife
Household Income		
Social security	\$6,000	\$5,000
Pension	<u>3,000</u>	<u>0</u>
Total household income	<u>\$9,000</u>	<u>\$5,000</u>

Property Taxes Accrued	\$ 700	0
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Rent Constituting Property Taxes Accrued		
20% of rent paid for occupancy only (20% x \$3,000)	<u>0</u>	<u>\$ 600</u>
Total Allowable Taxes and Rent	<u>\$ 700</u>	<u>\$ 600</u>

3. Divorce During 2005

A husband and wife lived together through May 31 and paid rent, which didn't include heat, of \$200 per month to that date. On June 1 they both moved. The husband paid rent, which didn't include heat, of \$150 per month and the wife paid rent, which didn't include heat, of \$175 per month. On December 1, 2005, they became divorced. The husband's services and property produced income for the year of \$5,000 through May 31, \$2,500 from June 1 to December 1, and \$500 after that date. The wife's services and property produced income of \$1,000 through May 31, \$1,500 from June 1 to December 1, and \$1,000 after that date. In this situation, figure household income and rent constituting property taxes accrued for each homestead credit claim as shown below.

Note: The income and rent for the time the spouses shared the same home are reported on both claims.

	Husband	Wife
Household Income		
(H) January 1 – May 31	\$5,000	\$5,000
(W) January 1 – May 31	1,000	1,000
(H) June 1 – November 30	1,250	1,250
(W) June 1 – November 30	750	750
(H) December 1 – December 31	500	0
(W) December 1 – December 31	<u>0</u>	<u>1,000</u>
Total Household Income	<u>\$8,500</u>	<u>\$9,000</u>

Rent		
(H) & (W) January 1 – May 31	\$1,000	\$1,000
(H) June 1 – December 31	1,050	0
(W) June 1 – December 31	<u>0</u>	<u>1,225</u>
Total Rent	<u>\$2,050</u>	<u>\$2,225</u>

Rent Constituting Property Taxes Accrued		
25% of rent paid for occupancy only	<u>\$512.50</u>	<u>\$556.25</u>

APPENDIX

Classification of Income

Marital property income. Marital property income must generally be divided equally between spouses on separate Wisconsin income tax returns and separate homestead credit claims (unless one of the exceptions to the marital property law applies). The following is a list of types of income reported on income tax returns and/or homestead credit claims which are generally marital property income when received:

- Wages
- Interest income
- Dividends
- Business income
- Capital gains from marital property
- Capital gains from individual or unclassified property to the extent attributable to the substantial efforts of either spouse that weren't reasonably compensated
- Pensions and annuities to the extent employment giving rise to the benefit occurred after the determination date
- Net rents and royalties, partnership income, and distributed S corporation income
- IRA distributions to the extent classified as marital property
- Farm income
- Unemployment compensation
- Railroad retirement benefits to the extent attributable to employment after the determination date (except Tier 1 benefits)
- Worker's compensation (except amounts for pain or suffering)
- Scholarships, fellowships, and grants
- G.I. bill benefits to the extent attributable to military service after the determination date
- Nontaxable military compensation and cash benefits
- Income distributed from trusts and estates (**Exception:** If distribution is to only one spouse, see "Individual income.")

Individual income. The following is a list of types of income reported on income tax returns and/or homestead credit claims which are generally individual income when received:

- Alimony
- Capital gains from individual or unclassified property to the extent the gain wasn't substantial or wasn't due to the substantial efforts of either spouse, or if the gain was substantial and due to the substantial efforts of either spouse, those efforts were reasonably compensated
- Pensions and annuities to the extent employment giving rise to the benefit occurred before the determination date
- IRA distributions to the extent classified as nonmarital property
- Income to one spouse from a trust created by a third person, unless the trust provides otherwise
- Undistributed S corporation income
- Social security benefits
- SSI payments
- Tier 1 railroad retirement benefits
- Railroad retirement benefits to the extent attributable to employment before the determination date
- Worker's compensation to the extent for pain or suffering
- Support money
- Cash public assistance (such as AFDC and foster care payments) and county relief
- G.I. bill benefits to the extent attributable to employment before the determination date
- Income from property gifted by one spouse to the other, absent a contrary intent

Note. The income tax law requires the reporting of items which the marital property law doesn't consider "income," such as capital gains which aren't due to the substantial efforts of either spouse and undistributed S corporation income. Although the department has shown these items as if they were individual income, this may not be the correct treatment. Should a dispute about the treatment of such income arise, it would likely be resolved by assessments in the alternative.

Worksheet for Married Persons Filing Separate Returns and Persons Divorced in 2005

Attach to your 2005 Wisconsin income tax return

Fill in your name and social security number

	Total marital property of you and your spouse	Marital property amount you are reporting	Other amount you are re- porting	Total amount you are reporting on your 2005 return
1. Wages, salaries, tips, etc.	<hr/>	<hr/>	<hr/>	<hr/>
2. Interest income	<hr/>	<hr/>	<hr/>	<hr/>
3. Dividends	<hr/>	<hr/>	<hr/>	<hr/>
4. Business income or (loss)	<hr/>	<hr/>	<hr/>	<hr/>
5. Capital gains or (losses)	<hr/>	<hr/>	<hr/>	<hr/>
6. Pensions, IRA distributions, and annuities	<hr/>	<hr/>	<hr/>	<hr/>
7. Rents, royalties, partnerships, estates, trusts, etc.	<hr/>	<hr/>	<hr/>	<hr/>
8. Farm income or (loss)	<hr/>	<hr/>	<hr/>	<hr/>
9. Unemployment compensation	<hr/>	<hr/>	<hr/>	<hr/>
10. Social security benefits	<hr/>	<hr/>	<hr/>	<hr/>
11. Other income	<hr/>	<hr/>	<hr/>	<hr/>
12. Wisconsin taxes withheld	<hr/>	<hr/>	<hr/>	<hr/>
13. Wisconsin estimated tax payments	<hr/>	<hr/>	<hr/>	<hr/>

Check the box which explains how you are figuring the amounts to report on your 2005 Wisconsin income tax return.

- ☐ I am figuring my income and withholding for 2005 based on Wisconsin's marital property law.
- ☐ I became married in 2005. I am figuring my income and withholding based on Wisconsin's marital property law for the period from _____ to _____.
- ☐ I became divorced in 2005. I am figuring my income and withholding based on Wisconsin's marital property law for the period from _____ to _____. My former spouse's name and social security number are _____.
- ☐ I was a part-year Wisconsin resident, or I was married to a part-year Wisconsin resident, in 2005. I am figuring my income and withholding based on Wisconsin's marital property law for the period from _____ to _____.
- ☐ I am figuring my income and withholding to reflect a marital property agreement or unilateral statement.
- ☐ Other reason – explain here. _____
- _____
- _____